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No. OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

ATTORNEY R, Petitioner

v.

THE MISSISSIPPI BAR, Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

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April 26, 1995

QUESTIONS PRESENTED

1. Are Rules 7.1(a&b), 7.2(a&f), and 7.4(a&b) of the **Mississippi Rules of Professional Conduct** violative of the freedom of speech afforded Attorney R by the First Amendment of the Constitution of the United States of America when applied to sanctions of an attorney when the only proof is that an attorney failed to include in his advertisements of his practice of law a disclaimer mandated by said Rules, there being no demonstrative proof of falsity, deceptiveness, misleading, or other activity impinging on any public activity or on any interest of the clients?

2. Do Rules 7.1(a&b), 7.2(a&f), and 7.4(a&b) of the **Mississippi Rules of Professional Conduct** create an irrebuttable presumption and thus violate Attorney

R's rights to due process of law as afforded him by the Fifth and Fourteenth Amendments of the Constitution of the United States of America when applied to sanctions of an attorney when the only proof is that an attorney failed to include in his advertisements of his practice of law a disclaimer mandated by said Rules, there being no demonstrative proof of falsity, deceptiveness, misleading, or other activity impinging on any public activity or on any interest of the clients?

[**Note:** Petitioner reserves the right to argue Question 3 in the event certiorari is granted on either of the above questions but does not include Question 3 among the reasons for the grant of certiorari.]

3. Has Section 7 of the **Mississippi Rules of Professional Conduct** been so unenforced by The Mississippi Bar that the enforcement against Attorney R denied him the equal protection of the laws afforded him by the Fourteenth Amendment of the Constitution of the United States of America when applied to sanctioning him for an advertisement that was no different in a deficiency of the required disclaimer than numerous other attorneys' ads for previous and subsequent years to the original Complaint filed and none of the other attorneys had been so sanctioned?

LIST OF PARTIES AND RULE 29.4(C) LIST

The parties to the proceedings below were the petitioner, Attorney R, and the respondent, The Mississippi Bar, formerly known as The Mississippi State Bar, an arm of the judiciary of the State of Mississippi.

There is drawn into question in this proceeding the constitutionality of the referenced statutes of the State of Mississippi, and 28 U.S.C. §2403(b) may be applicable. Rule 29.4(c) of the Rules of this Court requires and petitioner in his **Proof of Service** filed herein serves this pleading upon Mike Moore, Attorney General of the State of Mississippi.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

ATTORNEY R, Petitioner

v.

THE MISSISSIPPI BAR, Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF MISSISSIPPI

The petitioner Attorney R respectfully prays that a writ of certiorari issue to review the **Judgment** and opinion of the Supreme Court of the State of Mississippi entered in the above-entitled proceeding on January 26, 1995.

OPINIONS BELOW

The final **Judgment** of the Supreme Court of Mississippi, which appears in the

appendix hereto, p. 1a, **infra.**, is reported at 649 So. 2d 820 (Miss.1995).

The **Opinion and Judgment** of the Complaint Tribunal of the Supreme Court of Mississippi, dated April 5, 1993, is not reported. It is reprinted in the appendix hereto, p. 21a, **infra.**

JURISDICTION

As grounds upon which this Court has jurisdiction, Attorney R would show that the final **Judgment** of the Supreme Court of Mississippi, dated January 26, 1995, and sanctioning him with a private reprimand and costs, held that Rules 7.1(a&b), 7.2(a&f), and 7.4(a&b) of the **Mississippi Rules of Professional Conduct** as applied in this case, are not unconstitutional as being violative of Petitioner's rights of free speech guaranteed by the First Amendment of the Constitution of the United

States of America nor of the Due Process Clause of the Fifth and Fourteenth Amendments of the Constitution of the United States of America. The jurisdiction to review the judgment of the highest state court is invoked under 28 U.S.C. §2101(c) and is submitted for consideration pursuant to Rule 10.1(c) of this Court where the lower court decided a federal law question in a way that conflicts with applicable decisions of this Court.

CONSTITUTIONAL PROVISIONS AND RULES

First Amendment, **The Constitution of the United States of America:**

"Congress shall make no law . . . abridging the freedom of speech . . . ."

Fifth Amendment, **The Constitution of the United States of America:**

"No person shall . . . be deprived of life, liberty, or property, without due

process of law . . . ."

Fourteenth Amendment, **The Constitution of the United States of America:**

"[N]or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Mississippi Rules of Professional Responsibility:

Rule 7.1, Communications Concerning A Lawyer's Services.

A lawyer shall not make a false, deceptive or misleading communication about the lawyer or the lawyer's services. A communication is false, deceptive or misleading if it: (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the state-

ment as a whole not materially misleading; (b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law.

Rule 7.2, Advertising.

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services through public communication. (f) If a public communication, other than an approved law list or law directory, refers to an area(s) of law in which a lawyer performs or wishes to perform professional services, except those areas specifically governed by Rule 7.4(b), the public communication must include immediately after the listing the following statement:

"Listing of these previously mentioned area(s) of practice does not indicate any certification of expertise therein." The disclaimer shall not be in a type size smaller than the largest size of type used to list the ares of practice.

Rule 7.4, Communication Of Fields Of Practice.

(a) A lawyer may communicate the fact that the lawyer does . . . practice in particular fields of law. In public communication of practice in particular fields of law, a lawyer must include the statement required by Rule 7.2(f).
(b) A lawyer shall not state or imply that the lawyer is a specialist except as follows: . . . ." in patent or admiralty practice.

(The Constitutional Amendments and the Rules of Professional Responsibility are set out verbatim in the appendix hereto, beginning at p. 29a and 31a, respectively.)

STATEMENT OF THE CASE

The petitioner, Attorney R, was admitted to the practice of law in 1979. At all times material herein he resided in Warren County, Mississippi, while maintaining law offices in Vicksburg and Jackson, Mississippi.

In 1989, Attorney R advertised his law practice in The Real Yellow Pages in the fields of auto accidents, faulty products, medical negligence, workers' compensation and bankruptcy. The advertisements did not include the Rule 7.2(f) disclaimer. p. 34a-35a.

Attorney R was one of 38 attorneys to whom Michael Martz, General Counsel for the Mississippi State Bar ["the Bar"], wrote March 26, 1990, demanding that their advertisements include the Rule 7.2(f) disclaimer and to provide proof of compliance "to mitigate any possible disciplinary action that may be initiated against" them. Attorney R replied that he had not violated any "constitutionally valid rules of professional conduct". Attorney R thereafter neither included nor agreed to include in his advertisements the disclaimer.

On May 31, 1990, Mr. Martz filed a **Complaint** (Docket #89-436-2) with said Bar. The **Complaint** alleged that Attorney R had advertised in The Real Yellow Pages for the year 1989-1990 and because the disclaimer was not included therein such advertisement was misleading, false and deceptive and such failure was in viola-

tion of Rule 7.1(a) and 7.4(a&b) of the **Mississippi Rules of Professional Conduct.** In the **Complaint**, he verified that "No person can testify about what was said, done, not done or agreed upon by you and the attorney."

At the earliest stage of the disciplinary proceedings below, petitioner raised the constitutional claim.

On June 14, 1990, Attorney R in his response to the **Complaint** filed with the Bar affirmatively charged that the requirements of Rules 7.2(f) and 7.4(a) of the **Mississippi Rules Of Professional Conduct** ["the **Rules**"] "violate federal and state constitutional protections of freedom of speech, equal protection and due process of law."

Although the purpose of the **Complaint** was to grant investigative authority to the Bar, there was no evidentiary hearing on the **Complaint.**

On July 27, 1990, Mr. Martz, at the direction of the Committee on Professional Responsibility, filed a **Formal Complaint** in the Supreme Court of Mississippi, before a Complaint Tribunal ["the Tribunal"] in case #90B784. The Bar filed an **Amended Complaint** on August 21, 1990, the substance of which was the same as that as the May 31, 1990 **Complaint** except Attorney R's advertisement in the 1990-1991, edition of The Real Yellow Pages was included.

On October 24, 1990, Attorney R answered denying the advertisement contained a false, deceptive, and misleading communication about his legal services, denying any obligation to use the disclaimer and affirmatively stating that the requirement of the disclaimer violated his First Amendment right of freedom of speech afforded him by the Constitution of the United States of America.

Attorney R served upon the Bar interrogatories the intent of which was to draw out the facts to be proved that any person had been deceived or mislead by his advertisements and the manner and method for which the advertisements were false. On November 21, 1990, the overall response to the interrogatories was a conclusion by the Bar that since the advertisements did not include the disclaimer they were false, deceptive and misleading. No person was identified as having been harmed by said advertisement.

On May 13, 1992, without any activity on the case since November 21, 1990, the Bar filed a **Motion For Summary Judgment.**

On June 22, 1992, Attorney R filed a **Motion To Dismiss**, a ground of which included that there was no sworn testimony in support of the motion in proof of facts concerning the falsity, deceptiveness or

misleadingness of Attorney R's public communication but for the failure to include the disclaimer. He also claimed a denial of procedural due process resulting therefrom.

On October 22, 1992, before the Tribunal on the Bar's **Motion**, counsel for the Bar stated Attorney R's defense as being the constitutionality of the disclaimer Rule. Attorney R urged that the issue was quite an important matter of freedom of speech, cited verbatim from this Court's decision in **In re: R.M.J.**, 455 U.S. 191, 205 (1981) wherein it found the listings published by the appellant had not been shown to be misleading and the portion of disciplinary rule in that case an invalid restriction upon speech as applied to appellant's advertisements.

The only testimony was by Mr. Martz, who admitted that the Bar had no written inquiry concerning Attorney R's advertise-

ment; but rather it had comments from attorneys and the Bar makes a sweep of an area when it has an inquiry. He confessed the Bar never received any complaint from any individual that such individual was either deceived, mislead or provided false information from Attorney R's advertisement. There was no empirical data offered in support that any harm would occur without the use of the disclaimer in attorney advertising nor that the disclaimer would alleviate the perceived harm.

The Tribunal granted the Bar's Motion stating there to be no factual dispute with respect to the advertisements and the advertisements, as made and published, were violative of the provisions of Rule 7.2(f). Attorney R's motion to dismiss was denied. The Tribunal further opined that though it was not drawing any inferences, the Supreme Court of Mississippi could in certain matters and areas

draw inferences as logical consequences from acts or conduct or facts and that the Mississippi Supreme Court adopted and promulgated Rule 7.2(f) to avoid the possible misleading or misconception of those who read the advertisements or receive the advertisements and to remove the advertisement from its condemned effect upon the public a disclaimer is necessary.

On April 5, 1993, the Tribunal's **Opinion and Judgment** was filed with the Supreme Court of Mississippi.

On May 3, 1993, Attorney R appealed the Tribunal's decision to the Supreme Court of Mississippi, which reviewed the matter de novo.

The First, Fifth and Fourteenth Amendment claims were raised on appeal by Attorney R before the Supreme Court of Mississippi. They were detailed in his **Appeal Brief** in the Statement of Issues, in the Listing Of Areas Of Practice Pres-

ents No Danger Of Deception, in the Other Constitutional Issues, and in the Conclusion.

That court, **En Banc**, found that Attorney R had violated **Rules** 7.1(a), 7.2(f) and 7.4(a) because the mere listing of areas of practice without the disclaimer amounts to a per se false, deceptive and misleading advertisement over which the Bar has a substantial interest on behalf of the state to regulate. p. 9a-14a.

The Supreme Court of Mississippi, after having reviewed the constitutional issues raised, found "[c]onsequently, Attorney R's argument that his constitutional rights have been violated are unfounded." p. 15a, **infra.**

The court did not directly address the failure of the Bar to present any demonstrative evidence that the evils over which it claimed to have a substantial interest in protecting the public did in

facts exist and how the inclusion of the disclaimer would cure those evils. By its per se approach in holding the **Rules** to not being violative of Attorney R's freedom of speech rights afforded by the Constitution of the United States of America, the Supreme Court of Mississippi implicitly found demonstrative evidence to not be a pre-requisite to governmental regulation of commercial speech.

This **Petition** is directly from the state court decision.

REASONS FOR GRANTING THE WRIT

I.

The Supreme Court of Mississippi's per se doctrine in applying lawyer disciplinary rules without a requirement of demonstrating a need therefor and of harm resulting therefrom is an impermissible restraint on truthful commercial speech and conflicts with decisions of this Court relating to that First Amendment safeguard.

The Mississippi Supreme Court has decided an important question of federal law in a way that conflicts with applicable decisions of this Court. Such conflict "is a strong reason for the granting of certiorari". **Hudson v. Louisiana**, 450 U.S. 40, 42 (1981).

The matters for consideration before the lower state court were violations of First Amendment freedom of speech, Fifth

and Fourteenth Amendment due process and Fourteenth Amendment equal protection relating to the Bar restrictions upon Attorney R's print media advertisement. The statutory jurisdictional ground is 28 U.S.C. §2101(c).

The Bar argued supposition to the court about dangers of attorneys publishing that they practice in named fields of law but failed to validate its contentions by studies, anecdotal evidence or Attorney R's own conduct.

The Supreme Court of Mississippi in a more restrictive manner and means than permissible by the decisions of this Court in **Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio**, 471 U. S. 626, 648-649 (1985); **In re: R.M.J.**, 455 U.S. 191, 203 (1981); **Ohralik vs Ohio State Bar Association**, 436 U.S. 447, 462 (1977); and **Bates v. State Bar of Arizona**, 433 U.S. 350, 377-378 (1977) granted The

Mississippi Bar, an arm of the state judiciary, authority to regulate and sanction attorneys advertising in that state for a mere failure to include in their advertisements a disclaimer, which on its face is equally as likely to create confusion among the consuming public between the terms "ability", "competence", "limited fields of law" and "specialty". The decision in **The Mississippi Bar v. Attorney R**, 649 So.2d 820 (Miss.1995), if not overturned by this Court, will have a far-reaching erosion of and negative impact on commercial speech in the State of Mississippi, not only upon attorneys but upon other professions regulated by the state.

The granting of certiorari to the Supreme Court of Mississippi on the First Amendment issue would serve to correct the law of the State of Mississippi which "threatens societal interests in broad access to complete and accurate commercial

information that the First Amendment coverage of commercial speech is designed to safeguard." **Edenfield v. Fane**, 507 U.S. ???, ??? (1993).

The Supreme Court of Mississippi has surrendered its citizens' commercial speech protections afforded by the First Amendment to the unsupported suppositions of The Mississippi Bar that without the disclaimer the public will be deceived, misled, and subject to false information about an attorney's abilities. The lower court in its discussion of the law acknowledged that lawyer advertising may be regulated when "a particular form or method of advertising has proved to be deceptive in the past . . . ." **Attorney R, Id.** at 823, citing **McLellan v. Mississippi State Bar**, 413 So.2d 705, 708 (Miss.1982).

The two optimum groups of words of the **McLellan** decision are "proved to be deceptive" (past tense - actual deception)

and "in the past" (neither prospective nor possibility). In fact, that court made the **Bates'** advertisement part of the **McLellan** opinion at page 709, thereby inferring such advertisement to be in acceptable form and content for lawyer advertisement. The Supreme Court of Mississippi further found in its pre-**Rules** decisions, **McLellan**, at 707, that the issue of commercial speech by an attorney was more fully resolved in the well written opinion in **Re: R.M.J., Id.** and recognized that

> [i]t is established constitutional law that prior restraints on speech are not tolerated absent the clear and present danger. [citation omitted] Prior restraints on expression bear a heavy presumption against their legality. The party seeking restraint bears the heaviest

burden of justification. [citation omitted].

Thornton vs Breland, 441 So.2d 1348, 1350 (Miss.1983).

The **Mississippi Rules of Professional Conduct**, which became effective July 1, 1987, were a response to **McLellan** by non-advertising attorneys who in numbers greatly exceed the advertising attorneys. The response was to restrict truthful advertisement, if not totally eliminate it, "through unduly burdensome disclosure requirements [that] offend the First Amendment" contrary to this Court's decisions in **Ibanez v. Florida Department Of Business And Professional Regulation, Board Of Accountancy**, ??? U.S. ???, ??? (1994) and **Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio**, 471 U.S. 626, 651 (1985).

Rule 7 and its subparts were the device to stop or inhibit truthful advertisement. Until Attorney R's response to the March 26, 1990 letter of Mr. Martz, there had been no challenge to the Rule, only submission.

The decision in the case at bar being the first to address the constitutional issues implicitly reverses that court's prior decisions to placate The Mississippi Bar, creates new violative standards upon commercial speech of attorneys advertising in the state, and directly conflicts with the well established decisions of this Court concerning freedom of speech as it relates to commercial speech which is not false, deceptive or misleading.

The issue of this exact disclaimer concerning an attorney's advertisement was before this Court in **In re: R.M.J.**, Id. at 195n.6 but at oral argument appellant's counsel announced to the Court that be-

cause the action had not been based upon a failure to include the disclaimer, the constitutionality thereof was not before the Court. Id. at 204n.18.

In **Ibanez**, Id. at ??? (slip op., at 11), the matter of a disclaimer for a certified public account, who also was an attorney, was before this Court. The Court expressed no opinion whether in other proved circumstances "a disclaimer might serve as an appropriately tailored check against deception or confusion." **Id.**

Now squarely before this Court is the issue of the disclaimer required by a rule of professional responsibility declaring an advertisement to be false, deceptive and misleading if the advertisement did not include the required disclaimer. According to the lower court the rule is not violative of First Amendment freedom of speech protections and the

enforcement agency is not required to prove actual harm.

This Court has found that actual deception, not the possibility of deception, must occur for a state to invoke its substantial interest to regulate commercial speech. "[A] governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." **Edenfield**, **Id.** at ???. (slip op., at 5). See, e.g., **Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio**, 471 U.S. 626, 648-649 (1985); **Bolger v. Youngs Drug Products Corp.**, 463 U.S. 60, 71n.20 (1983); **In re: R.M.J.**, 255 U.S. 191, 205-206 (1981); **Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York**, 477 U.S. 557, 569 (1980); **Friedman v. Rogers**, 440 U.S. 1, 13-15 (1979); and **Linmark Associates, Inc.**

v. Willingboro, 431 U.S. 85, 95 (1977).

The Supreme Court of Mississippi has expanded the regulatory power beyond its decision in **Attorney R** by adopting new and more restrictive rules upon lawyer advertising. The new **Rules** are similar to those in the **Florida Bar v. Amendments To Rules Regulating the Florida Bar**, 621 So.2d 1032 (Fla.1993).

II.

When a state demonstrates that ithas a substantial interest in a actual harm resulting from commercial speech, it may not use irrebuttable presumption means or methods to deny Attorney R the protections afforded him by the due process clauses of the Fifth and Fourteenth Amendments where such means or methods have the effect of creating an absolute ban on the advertisement in violation of the Freedom of Speech Clause of the First Amendment.

Contrary to this Court's ruling in **Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio,** 471 U.S. 626, 648-649 (1985) the Supreme Court of Mississippi rotely invoked the the words "inherently misleading" to support the ban on Attorney R's advertisement which did not have the disclaimer. That court found that the failure to use the disclaimer to be "inherently misleading" in that

> [t]he public could easily assume that an attorney who lists areas(s) of practice in an advertisement is either a specialist or more competent in the particular area(s) listed than attorneys who do not advertise those particular area(s) or who advertise the area(s), but use the disclaimer. The disclaimer is to prevent misleading statements to the public and to prevent a disservice to all attorneys who comply

with the rule.

Attorney R, at pp. 823-824.

The Supreme Court of Mississippi overlooks that this Court in **In re R.M.J.**, 455 U.S. 191, 203 (1982) said that the words in the advertisement must be inherently misleading it did not rule that the failure to use words in the advertisement was inherently misleading. Even though Rule 7.1(a) states that there may not be an omission in the communication which would make the communication as a whole misleading, the Rule is that it be **materially** misleading.

This Court in **Cleveland Board of Education vs LaFleur**, 141 U.S. 632, 645 (1974), citing **Vlandis vs Kline**, 412 U.S. 441, (1973) reaffirmed permanent irrebuttable presumptions to have been long disfavored under the protections afforded by the Due Process Clause of the Fifth and Fourteenth Amendments, and that

the Due Process Clause requires a more individualized determination. "When a statute sweeps too broadly to presumptively include within its presumptions 'not necessarily or universally true in fact' and there are 'reasonable alternative means of making the critical determination', the statute violates the Due process Clause of the Fifth Amendment." **Cleveland**, at page 644-645.

The irrebuttable presumption upon which this **Petition** is based is the false syllogism used by the Bar and adopted by the Supreme Court of Mississippi reviewing its per se approach.

Major premises

False, deceptive or misleading public communications include a failure to include the disclaimer.

Minor premises

False, deceptive or misleading public communications contain **material** misrepresen-

tations of facts or omit facts necessary to make the communication considered as a whole not materially misleading.

Conclusion

The failure to include the disclaimer in public communications is a material misrepresentation of facts or omits facts necessary to make the communication considered as a whole not materially misleading.

The state court adopted irrebuttable presumption approach is as follows:

The Rules require the disclaimer. An attorney impliedly represents himself to the public as having special expertise in the field of law advertised when the disclaimer is not included therein. An attorney may not represent himself as having special expertise in a particular field unless it is patent or admiralty law. An attorney who impliedly represents himself as an expert in the unnamed fields

of practice has made a false, deceptive and misleading communication about himself or his services. Rule 7.1(a)

However, Rule 7.1(a) requires that the communication be "a **material** misrepresentation of **fact or law** or [to] omit[] a fact necessary to make the statement as a whole no **materially** misleading" [petitoner's emphasis].

Materiality is a factual issue. The proof of materially as a factual issue is lost in connecting the major and minor premises toward a conclusion. The court below creates its own definition of how a communication is false, deceptive or misleading but failed to state how the lack of including the disclaimer was material so as to make the advertisement false. The **Judgment** of the Supreme Court of Mississippi in that respect exceeds safeguards afforded petitioner by the due process clause of the Fifth and Fourteenth

Amendments of the Constitution of the United States of America.

The **Judgment** was rendered sustaining the Bar's **Motion For Summary Judgment** ["**Motion**"] upon the fact that the court assumed the public could be misled or have a misconception, **Attorney R**, at p. 823-824, not proof that it had been misled or had a misconception, about the disseminated information. Nevertheless, there was an equal question of fact of whether the consuming public may be misled or have a misconception about the disseminated information by Mr. Robb. It was the obligation of the movant The Mississippi Bar to prove material facts in support of its **Motion** rather than proffer an assumption of what may or may not happen to others or what others believe or may not believe.

The Supreme Court of Mississippi exercised and applied an unconstitutional per se approach to the motion and sup-

planted the burden of proof of material facts with the court's presumptions, which are irrebuttable. There being no proof of actual misleading, misrepresentation or falseness about the advertisement for Attorney R to offer rebuttable evidence, the **Motion** was sustained in violation of petitioner's due process rights afforded by the Fifth and Fourteenth Amendments of the Constitution of the United States of America.

The ruling by the lower court effectively absolutely bans lawyer's truthful commercial speech about the lawyers' fields of practice without the inclusion of the disclaimer which is required to be in a type size no smaller than the largest size of type used to list the ares of practice. Rule 7.2(f). **Ibanez v. Florida Department Of Business And Professional Regulation, Board Of Accountancy**, No.93-

639 (U.S.Sup.Ct., decided June 13, 1994), (slip op., at 11).

Such ban violates the freedom of speech guaranteed to truthful commercial speech by the First Amendment of the Constitution of the United States of America. **Ibanez, supra.** at ___ (slip op., at 8); and **Edenfield v. Fane**, 507 U.S. ___, ___ (slip op., at 9).

Also, the **Judgment** impermissibly grants protection to one commercial group from truthful commercial speech of a competing commercial group. The court stated the disclaimer is to prevent a disservice to all attorneys who comply with the rule. **Attorney R**, at p.824.

CONCLUSION

For the above reasons, this petition for certiorari should be granted.

Petitioner reiterates that **Question**

3 is presented herein, not as a ground for granting certiorari, but because in the event that this case is remanded for fact finding in support of the The Mississippi Bar's motion, petitioner would raise in the disciplinary proceedings the question of whether the unequal enforcement of the **Rules** in the facts concerning Attorney R violated his equal protection rights afforded him by the Fourteenth Amendment of the of the United States Constitution.

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